

GAO

United States General Accounting Office
Washington, DC 20548

17370
Office of
General Counsel

In Reply
Refer to: B-200114

March 16, 1981

Mr. Steven G. Nelson
2117 W. 1300 N.
Clinton, Utah 84015

Dear Mr. Nelson:

This is in response to your letter dated July 7, 1980, by which you appeal the action taken by our Claims Division on April 23, 1980, denying your request for pay retention. You cite Federal Personnel Manual (FPM) Bulletin 536-1, section 536.212(4) which states that pay retention shall be extended to any employee whose pay would be reduced because he no longer meets allowable periods of service in foreign areas. As a result, you do not understand why acceptance of the downgraded position at Hill Air Force Base does not entitle you to receive retained pay.

The Department of Defense issued interim pay retention regulations pursuant to FPM Bulletin 536-1. Under these regulations the Department of Defense extended pay retention to DoD employees in certain situations, including "when the employee is reduced in grade upon return from an overseas assignment in accordance with the terms of a preestablished agreement."

Although there is no reference to a preestablished agreement between you and the Department of Defense in the record, we assume that any such agreement would be in accordance with applicable statutes and regulations. Section 1586, of title 10 of the U.S. Code, which concerns DoD civilian employees assigned to duty outside the United States, specifies that:

"(c) The right to return to a position in the United States granted under this section shall be without reduction in



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the seniority, status, and tenure held by the employee immediately before his assignment to duty outside the United States and the employee shall be placed, not later than thirty days after the date on which he is determined to be immediately available to exercise such right, in accordance with the following provisions:

"(1) The employee shall be placed in the position which he held immediately before his assignment to duty outside the United States, if such position exists.

"(2) If such position does not exist, or with his consent, the employee shall be placed in a vacant existing position, or in a new continuing position, for which he is qualified, available for the purposes of this section in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, and in a grade equal to the grade of, the position which he held immediately before his assignment to duty outside the United States."

This section makes it clear that you were entitled to return rights to the position and grade you held immediately before your assignment to duty in Japan, if such position existed. If such position did not exist then you were entitled to a position for which you qualified, in the same geographical area, and in the same grade as the position you held prior to your transfer overseas.

In implementing this statute, the Department of Defense, at DoD Instruction 1404.8, established a plan to assist employees returning from overseas in finding a position at the employee's present grade, in your case GS-12. This instruction states, at para. IV B.5:

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"An employee whose exercise of reemployment rights would result in a reduction from his current grade shall be given assistance through return placement programs for at least a six-month period in locating a position at his present grade before being required to exercise his return rights. Employees returning to a lower grade will be entitled to saving benefits if otherwise eligible." (Emphasis added.)

Further, the DoD Manual 1400.20-1-M, at Chapter 4, Priority Placement Program (overseas activities), Para. I.B.1.c. provides:

"Nondisplaced employees will normally be registered for referral to the minimum number of activities likely to provide a job opportunity within the zone from which recruited, last resided preceding overseas service, or for activities within one zone less distant from the overseas activity.* * *"

Paragraph I.B.2 contains the following relevant provisions.

"a. Nondisplaced overseas employees with reemployment rights to a lower grade are eligible to remain in the Program until placed, renewal of their agreement, or exercise of their re-employment rights.* * *

* * * * *

"f. Nondisplaced overseas employees with return rights at lower than current grade level serving under a 5-year limitation may be registered in the PPP 6 months before the 5-year limitation date * * * for grades down to

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but not including the grade to which re-employment rights exist.* * *

(Presumably you were a nondisplaced overseas employee since you remained in your job overseas while you were registered in the priority placement program). These provisions suggest that you were registered for GS-12 positions at the Tooele Army Depot and probably for other GS-12 positions within the Army in the same geographical area as the Tooele Army Depot. Although not stated in the record, we assume that you were not offered a GS-12 position at the Tooele Army Depot. However, you were offered your position and grade as it existed prior to the time you transferred overseas, as you indicate that you turned down a GS-11 Mechanical Engineer position at the Tooele Army Depot. This is the return right to which you are entitled under 10 U.S.C. § 1586(c)(1), above. However, you accepted a position with the Air Force. Thus it appears that you are not "otherwise eligible" for pay saving benefits since your acceptance of a position at Hill Air Force Base was not in accordance with 10 U.S.C. § 1586(c)(2) and presumably not in accordance with the preestablished agreement, referred to above.

Although the Department of Defense recognizes pay retention rights when there is movement across component lines (see DoD Manual 1400.20-1-M, Chapter 2, Para. IX. A.3) this section also requires that the employee be "otherwise eligible." Based on the information which you have presented you do not appear to be otherwise eligible.

We hope the above information will be of assistance to you.

Sincerely yours,



Edwin J. Monsma
Assistant General Counsel